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Nos. 81-2147 and 81-2188
(Consolidated)

In The
Supreme Court of the United States
October Term, 1982

STATE OF ARIZONA, et al.,
Petitioners,

vs.

SAN CARLOS APACHE TRIBE OF ARIZONA, et al.,
Respondents.

STATE OF MONTANA, et al,
Petitioners,

vs.

NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE INDIAN RESERVATION, et al.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONERS STATE OF MONTANA et al. in No. 81-2188

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INTRODUCTION

The respondents' various arguments all result in preventing the Montana water courts from issuing meaningful decrees while permitting duplicative, piecemeal litigation to be conducted simultaneously in the federal courts. The policies of the McCarran Amendment, as interpreted by this Court in *Colorado River Water Conservation District v. United States,* 424 U. S. 800 (1976) [cited as *Akin*] should be followed without modification.

ARGUMENT

I. The purpose of the McCarran Amendment, as shown in its legislative history and as interpreted in Akin, was to have all water rights included in this case adjudicated in unified proceedings in Montana's state courts.

A. Respondents incorrectly read the legislative history.

Some respondents argue that the legislative history and language of the McCarran Amendment favor bifurcated proceedings, with Indian reserved rights adjudicated in federal courts and all other water rights, (including non-Indian federal reserved rights) in state courts.[1] In formulating their theory on bifurcated proceedings, these respondents repudiate the repeated emphasis in the legislative history of the McCarran Amendment on the need for *all* water claimants to have their claims adjudicated in a single forum. *E. g.*, S. REP. No. 755, 83rd Cong., 1st Sess. (1951) [cited as S. REP.] at 4-5, Pet. App. 153. Respondents either ignore or belittle two very specific and important parts of the legislative history, both of which

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[1] *E. g.*, Crow Br. 23-27; Salt River Pima-Maricopa Indian Community Br. 17; San Carlos Apache and Payson Community of Yavapai Apache Br. 74-75.

Other respondents misread petitioners' position to be that the state forum is the exclusive forum under the McCarran Amendment. Assiniboine & Sioux Tribes, Confederated Salish & Kootenai Tribes, and Northern Cheyenne Tribe Br. [hereinafter Assiniboine & Sioux Br.] 16-21. Petitioners have never so argued. Montana Br. 41.

compel the conclusion that the McCarran Amendment was not passed to permit or encourage the bifurcated proceedings advocated here.

The first significant part of the legislative history which various respondents ignore is that as originally introduced, the McCarran Amendment contained a provision allowing the United States to remove a state court adjudication involving federal reserved water rights to federal court. The removal provision was stricken from the final version in order to avoid "unnecessary hardship on the individual water user" and to avoid jeopardy to state adjudication and administration. Hearings Before Senate Subcommittee on the Judiciary for S. 18, 82nd Cong., 1st Sess. 50 (1951), Montana Br. App. 30-31.

Respondents belittle a second significant part of the legislative history to the McCarran Amendment, a letter to Senator McCarran from the United States Department of the Interior acknowledging that interests of the United States in waters for or on Indian reservations were included in the Act, but urging that those waters be excluded. S. Rep. 755 at 8, Pet. App. 147, 159-161.[2] Congress rejected the request, evidencing clearly Congress' intent that those rights reserved on behalf of Indians should be included in state general stream adjudications.

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[2]The Crow Tribe of Indians also makes much of its perception that the Indian point of view was not before Congress when the McCarran Amendment was considered, Crow Br. 30, thus ignoring the fact that the Department of the Interior vigorously opposed the inclusion of Indian reserved water rights in the McCarran Amendment.

B. Akin dispensed with respondents' reading of the McCarran Amendment's intent and its legislative history.

The respondents' arguments that the legislative history of the McCarran Amendment is essentially silent on federal reserved rights and Indian water rights, indicating they should be dealt with in federal courts, duplicate the arguments in *Akin*. United States Br. 25-31, 58-61, *Akin;* National Congress of American Indians, Inc., et al. Amicus Br. 2-3, *Akin;* Southern Ute Indian Tribe, Ute Mountain Ute Indian Tribe, *et al.* Amicus Br. 17-18, *Akin;* Petition for Rehearing by Amici Curiae Southern Ute Indian Tribe and Ute Mountain Ute Indian Tribe 10, *Akin.* This Court solidly rejected these arguments. *Akin,* 424 U. S. 811-812. Instead, this Court construed Congress' rejection of the suggestion of the Department of Interior to exclude Indian water rights as *evidence* that Indian water rights were included within the ambit of the McCarran Amendment. *Id.* at 812.

In *Akin* this Court heard the same urgent pleas to bifurcate water proceedings, either so that all federal reserved rights could be determined in federal court,[3] or so that only Indian water rights could be determined in federal court.[4] In the case of both requests, the proposed

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[3]United States Br. 43-52, *Akin;* Southern Ute Indian Tribe, Ute Mountain Ute Indian Tribe, *et al.* Amicus Br. 32-35, *Akin.*

[4]Petition for Rehearing by Amici Curiae Southern Ute Indian Tribe and Ute Mountain Ute Indian Tribe 3, *Akin;* Amicus Br. of National Congress of American Indians, Inc., Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana, Crow Tribe of Montana, *et al.* 3-5, *Akin.*

plan was to integrate the federal and state decrees by "plugging in" one to another. This Court rejected the bifurcation proposals, holding that the policy of the McCarran Amendment favored adjudication of all water rights—including Indian reserved water rights—in a single forum. *Akin,* 424 U. S. at 804, 819.

After this Court issued the *Akin* opinion, two amici tribes, the Southern Ute and the Ute Mountain Ute Indian Tribes, through their attorney, Robert S. Pelcyger, who represents the Crow Indian Tribe in the Montana cases, submitted a petition for rehearing arguing that this Court obviously was "confused" when it held that the intent of the McCarran Amendment was "to adjudicate all rights on a stream in a single forum." Petition for Rehearing 10, *Akin.* This Court declined to modify its ruling in April, 1976.

C. This Court should once again reject the proposal for bifurcated proceedings.

1. *Western States reasonably have relied upon Akin as settled law.*

Since 1976, various western states have relied on the *Akin* decision, and have included Indian reserved water rights in their state general stream adjudications.[5] This has been done with large investments of money and time.[6]

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[5]See, Wyoming Amicus Br. 2-3; Washington, Utah, and Idaho Amicus Br. 2-3, 6-7 and n. 8; New Mexico Amicus Br. 2; Colorado Amicus Br. 2; South Dakota Amicus Br. 2-3.

[6]Wyoming for instance has spent $7 million and Montana $3,700,000 (since July 1, 1979). *See also,* Arizona Reply Br. 11, n. 12.

These states' reliance upon *Akin* (and the McCarran Amendment) seemed all the more reasonable when this Court declined to review the well-reasoned holding of the Tenth Circuit that New Mexico's disclaimer provision did not preclude New Mexico from including Indian water rights in its state adjudication process. *Jicarilla Apache Tribe v. United States*, 601 F. 2d 1116 (10th Cir. 1979), *cert. denied*, 444 U. S. 995 (1979). This Court did not then accept the suggestion of the United States that *Akin* be modified so that Indian water rights could be determined in a federal forum and then "simply" integrated into a state court decree. United States Br. 11, *Jicarilla*. Now would be a poor time indeed for this Court to accept the identical arguments for bifurcated proceedings which were rejected in *Akin*.

2. *Only a Congressional change of the McCarran Amendment will permit bifurcation of adjudication of Indian rights from other rights included in state court proceedings.*

At this time, only a legislative change in the McCarran Amendment itself could authorize the bifurcation sought by respondents.[7]

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[7]Representatives of various Montana tribes have acknowledged that modification of the McCarran Amendment itself is required. *See, e. g.*, statement of Norman Hollow, Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Senate Select Committee on Indian Affairs, 96th Cong., 1st Sess., *Oversight Hearings on Litigation Involving Water Rights in Montana* (1979) [cited as *Oversight Hearings*] 77; Statement of Charles "Jack" Plumage, Chairman of the Fort Belknap Indian Community of the Fort Belknap Indian Reservation, *Oversight Hearings* 393.

3. *Miscellaneous arguments of respondents repeat arguments rejected in Akin.*

The respondents argue that Indian water rights should not be adjudicated in state courts, especially disclaimer state courts, because state judges are elected,[8] hostile to tribes[9] and incapable of comprehending the allegedly difficult questions of federal law involved in the Indian reserved water rights claims.[10] The same arguments were made in *Akin*. Amicus Br. of the Southern Ute Tribe and Ute Mountain Ute Tribe, *et al.* 36-40, and rejected as baseless. *Akin*, 424 U. S. at 812.

It is significant that of all the tribes which have been involved in state adjudication proceedings (other than the respondent tribes), only the Jicarilla Apache Tribe has participated as amicus in this case. In its amicus brief the Jicarilla Apache Tribe states its preference to be in federal court, but says nothing indicating that its water

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[8]The Chief Judge of the Montana Water Court, Judge W. W. Lessley, is a retired state district judge whom the Chief Justice of the Montana Supreme Court appointed in 1982 to his current position pursuant to *Mont. Code Ann.* [hereinafter M. C. A.] § 3-7-221 (1981). *See* Appendix B *infra* for the text of M. C. A. §§ 3-7-221 to -224. Other retired judges have been appointed as water judges.

[9]The Assiniboine & Sioux Br. 16 argues that prejudice and hostility shown by statements of some Montana citizens at the *Oversight Hearings* will necessarily interfere with the independent judgment of the water judges. There is *no* evidence supporting this statement.

[10]That argument slights United States Judge Paul Hatfield, one of the two judges who jointly dismissed the Montana federal cases in deference to the ongoing state court proceedings. Judge Hatfield previously was a judge of the Montana District and Supreme Courts. In contrast, the United States argues (as Petitioners believe) that the business of determining the state law water rights is "typically more complex" than the determination of the federal reserved rights, including Indian reserved rights. United States Br. 30.

rights claims are being treated hostilely or ineptly by the state courts. No other tribes have supplied evidence to sustain the respondents' allegations of state court hostility.

D. Akin applies to disclaimer states.

We have previously set forth our arguments: the legislative history for the McCarran Amendment shows that Congress meant the McCarran Amendment to include all federal water rights, and it has always been understood that the McCarran Amendment applies to all western states, regardless of disclaimers. Montana Br. 11-17. *See, also,* Arizona Br. 17-20. The United States agrees. United States Br. 14. Certain respondents, especially the Crow Tribe of Indians represented by Robert Pelcyger, argue that disclaimer provisions "do and should make a difference" so that *Akin* cannot apply to disclaimer states. Crow Br. 38. Mr. Pelcyger's argument is contrary to the argument he put forth in *Akin*. In the brief he wrote for various amici tribes (including one from Montana), Mr. Pelcyger argued that "the form, or even the absence, of Indian jurisdictional disclaimer provisions makes no material difference as far as the exercise of state jurisdiction is concerned" [citations omitted]. Southern Ute Tribe, Ute Mountain Ute Tribe, *et al.* Amicus Br., *Akin,* 24 n. 20. Mr. Pelcyger argued in *Akin* that the existence of disclaimers in the majority of the western states was evidence that all of the western states (including Colorado and the other three non-disclaimer states) should be treated alike as having disclaimed jurisdiction over Indian water rights.

To borrow from the United States in these cases, it is simply "too late in the day" to read disclaimers as ousting state jurisdiction over Indian reservation property interests, including water rights.

II. Considerations of wise judicial administration compel reversal of the Ninth Circuit judgment.

A. The district court properly exercised it discretion.

Recently this Court reaffirmed the *Akin* case, holding that "decision whether to defer to the state courts is necessarily left to the discretion of the district court." *Moses H. Cone Memorial Hospital v. Mercury Construction Corporation,* — U. S. —, 51 U.S.L.W. 4156, 4160 (Feb. 23, 1983).[11] In *Cone,* this Court once again acknowledged that the McCarran Amendment embodied a "clear federal policy . . . [of] avoidance of piecemeal adjudication of water rights in a river system," citing *Akin* at 819. *Id.* at 4160. This Court reiterated that "the Amendment represents Congress's judgment that the field of water rights is one peculiarly appropriate for comprehensive treatment in the forums having the greatest experience and expertise, assisted by state administrative officers acting under the state courts." *Id.* at 4160.

The district court properly applied the *Akin* test. The Ninth Circuit substituted its opinions for the findings of the district court, and thus improperly refused to defer to the district court's proper exercise of discretion.

B. The district court correctly dismissed the federal cases on the basis of wise judicial administration.

The Montana tribes and Bowen each focus upon one or more of the *Akin* factors, alleging that the Montana state court proceedings do not meet them. No respon-

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[11] *See, Will v. Calvert Fire Ins. Co.,* 437 U. S. 655, 664 (1978).

dent makes arguments sufficiently weighty to overcome the conclusion of the district court that these federal proceedings should be dismissed in deference to the on-going state court proceedings.[12]

1. State water rights are extensively involved in the federal suits. As filed, all of the federal cases require thousands of individual water users to prove their claimed water rights. If this Court does not modify *Akin* as suggested by the United States, those state water rights will continue to be involved in the federal suits. If this Court adopts the United States' proposal, and the United States amends its pleadings to exclude the state water rights (and non-Indian federal reserved rights), the United States apparently will retain the private parties as defendants in order that the federal decree will be binding upon them. United States Br. 31-35. Thus, thousands of state water claimants will continue to be involved in these suits, while at the same time they must litigate their rights in state court. The Montana petitioners all view that result as the kind of duplicative litigation which the McCarran Amendment was enacted to avoid.

2. The federal suits were filed in anticipation of and reaction to the Montana legislation commencing the adjudication of water rights, including reserved rights. *See* Montana Br. 28-33.[13] The record shows that the

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[12]See Montana Br. 27-32.

[13]The Assiniboine and Sioux Brief i, 4-5, 28-29, argues that the federal suits were filed before the Montana statutes were even enacted. The Brief incorrectly states that the Montana Water Use Act enacted in 1973, R. C. M. §§ 89-865 *et seq.*, Pet. App. 62-101, was entirely repealed by Senate Bill 76, Pet. App. 102-132. In fact, Senate Bill 76 did expedite the water adjudication process commenced in 1973 by requiring all claims of

(Continued on next page)

United States and the Tribes were carefully watching all legislative and judicial developments which would cause their reserved rights to be adjudicated. The federal suits were filed only weeks before legislative changes were effective, *See* Montana Br. 4-8, in order for the Tribes and the United States to win the race to the Courthouse. The record shows that the federal suits were filed in order to disrupt the state proceedings. *See* Montana Br. 28-33. In any event, this Court has held in *Akin* that mere technicality of the winning of the race to the Courthouse will not alone suffice to defeat the state court jurisdiction over the same waters. *Akin*, 424 U. S. at 806.

3. The federal suits are in their infancy. Nonetheless, the Brief of the Assiniboine and Sioux Tribes 29 contends that "substantial proceedings beyond the filing of the complaint had taken place in all seven Montana federal cases before they were dismissed by the District Court." A fair reading of the record compels the opposite conclusion. In the cases filed in 1975,[14] four years of litigation yielded only motions to dismiss and briefs

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(Continued from previous page)

water rights in Montana existing as of July 1, 1973, to be filed, and by setting up the Montana Water Courts. See Montana Br. 30-33. Senate Bill 76 did repeal the earlier provisions for the Montana Department of Natural Resources and Conservation to gather data for determination of existing rights and to apply for an order from the district court requiring all claimants of water in a specified area to file a claim within a specified time period. Pet. App. 67-75. This was the procedure being implemented when the 1975 federal suits were filed. Montana Br. 5-6. The system for issuing permits for all new water rights after July 1, 1973, was not affected by Senate Bill 76.

[14] *Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation v. Tongue River Water Users Association, et al.*, No. CV-75-6-BLG, CA-79-4887; *United States v. Tongue River Water Users Association, et al.*, No. CV-75-20-BLG, CA-80-3040, 80-3041, 80-3042; *United States v. Big Horn Low Line Canal, et al.*, No. CV-75-34-BLG, CA-80-3062, 80-3063.

which were pending without further progress on the litigation. Only one defendant, as far as we can tell, served interrogatories upon the plaintiffs—respondent Bowen. J.A. II 6a, 7a. In May and June, 1979, the United States did serve interrogatories and requests for admission, but in only three of the seven cases.[15] "Dozens" of defendants did respond—a total of five dozen, by our count, J.A. II 6a-12a, sixty individual defendants, many of whom were husbands and wives who jointly claimed water rights—a minuscule number when measured against thousands of defendants.

The federal courts have dealt with these cases far less effectively and expeditiously than the Montana water courts, which were specially designed to do adjudication of the water rights involved in these cases. Since 1973, the state has been laying the groundwork for the adjudication of water rights. Momentum has been building. On April 30, 1982, all claims for water rights existing as of July 1, 1973 were to have been filed in the state water courts. The water courts are proceeding to evaluate claims, obtain additional evidence, and issue preliminary decrees as soon as possible. The Montana water courts did not suspend their work awaiting the outcome of this case. Given the length of the federal proceedings (commenced in 1975 and still in their infancy), the *Akin* precedent, and the mandate of the Montana legislature to get the job done,[16] the Montana water courts had little choice but to proceed with their work.

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[15] *United States v. Aasheim, et al.*, J. A. II 6a; *United States v. Aageson, et al.*, J. A. II 7a; *United States v. AMS Ranch, Inc., et al.*, J. A. 11 7a.

[16] See Montana Br. 27-33.

4. The Montana federal judges held that the "state forum will likely be more convenient, geographically, than the federal forum." Pet. App. 61. It is clear to us that for proceedings before the assigned judges, the local network of the Montana Water Court, with appeals to Helena, Montana, is far more convenient for Montana petitioners than the federal court with judges sitting in Great Falls and Billings, and appeals to San Francisco, California. *See* Montana Br. 39, n. 30.

The respondents perceive the peripatetic master as the answer to all concerns about the convenience of the forum. Unquestionably, in many water adjudication proceedings, busy state and federal judges use masters. The Montana Water Use Act requires the use of masters, who have already been appointed. M. C. A. § 3-7-301, Pet. App. 104. The possibility of future appointment of masters in the federal proceedings, at best, might equalize the convenience of both forums for out-of-court proceedings, thus negating the importance of the convenience of the forum factor examined in *Akin*.

5. The comprehensive Montana proceedings are more than adequate to dispose of all water claims. The Montana courts are capable of adjudicating the federal reserved rights. *Akin* affirmed the competence of Colorado's courts to do this task. *Akin*, 424 U. S. at 812. The United States itself is content to leave its own reserved water rights to the Montana water courts, without suggesting that those rights are more easily adjudicated than Indian reserved rights. United States Br. 37. *See* Montana Br. 33.

The Montana respondents (except the United States) argue that the Indian tribes and individual Indians cannot be bound by a decree unless they are parties to the action because the United States cannot represent them due to a disabling conflict of interest. No tribe argues that it has been incompetently represented by the United States in these proceedings. Instead, the record and the *Oversight Hearings* show that the tribes have authorized prosecution of these federal suits and have worked in concert with the United States throughout these proceedings. *See* Montana Br. 42-43.

Significantly, the United States denies the existence of any conflict, United States Br. 24, but argues that "mutual trust and appearance of justice are better served by permitting the tribe to prosecute its own claims." *Id.* at 25. The United States could administratively alleviate any possible conflict of interest by authorizing outside counsel to represent the interests of the tribes, while continuing to have Department of Justice attorneys representing the United States' sovereign interests. By this method, the United States could assuage its concerns for the "appearance of justice" without requiring a modification of *Akin* or a ruling that deprives the state courts of jurisdiction. In any event, if the feared conflicts do materialize to the deteriment of the tribes, the tribes have a cause of action against the United States for breach of fiduciary duty. *Morrison v. Work,* 266 U.S. 481 (1924); *United States v. Creek Nation,* 295 U.S. 103 (1935); *Fort Peck Indians v. United States,* 132 F. Supp. 222 (Ct. Cl. 1955).

Respondent Bowen argues that the Montana state proceedings are incomplete because there is no personal

service on allottees, thus fatally distinguishing this case from *Akin*.[17] Montana's statutes provide for the same notice given in Colorado in *Akin*. Compare M.C.A. § 85-2-213 *with Akin*, 424 U.S. at 806. *Akin* strongly suggests that the United States as trustee is the only necessary party in a state action to adjudicate federal reserved water rights. Moreover, Respondent Bowen's analysis is wrong. Since the allottees claim only a portion of the tribes' reserved right, *United States v. Powers*, 305 U.S. 527, 532 (1939), their claim is no greater than or different from that which the United States makes on behalf of the tribe.[18] The state's interest in securing an adjudication of all rights to water in Montana is satisfied without joinder of individual allottees, since they claim only a portion of the larger right held by the United States in trust for the

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[17]*See also* Assiniboine & Sioux Br. 30-31.

This Court did not grant certiorari to consider the question of personal jurisdiction over Indian allottees. The record does not reflect the extent to which any allottees, including respondent Bowen, received actual notice of the state water adjudication proceeding through compliance with M. C. A. § 85-2-213, Pet. App. 114-115. Neither the district court nor the court of appeals expressed any opinion on the personal jurisdiction question.

[18]Respondent Bowen is the heir of a Northern Cheyenne allottee. The Crow and Northern Cheyenne Tribes have stated that when negotiation with Montana's Reserved Water Rights Compact Commission suspends the Tribes' obligation to file water claims (M. C. A. § 85-2-217, Pet. App. 122-123), individual allottees are not obligated to file claims in the state court. Letter of Jeanne S. Whiteing to Chief Water Judge W. W. Lessley, April 14, 1982, reproduced as Appendix A *infra*.

tribes. For this reason, failure to join the allottees will not prevent a comprehensive state adjudication.[19]

III.

The United States' proposal for simultaneous adjudication should be rejected.

The Reply Brief of the Petitioners in No. 81-2147 ably addresses the defects in the proposal of the United States for simultaneous adjudication of water rights in state *and* federal courts. We adopt Part III B of that Reply Brief.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed in favor of the rulings of the Montana district court.

Respectfully submitted,

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[19]All these rights are in fact before the state courts. As the deadline for filing claims approached, the United States, as trustee for the tribes, made protective filings under the state procedure, claiming reserved righs in an undetermined amount. The State has stipulated that these filings are adequate to prevent the presumptive abandonment of the tribes' reserved water rights. See Montana Br. 31-32.

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March, 1983

APPENDIX A

LETTER FROM JEANNE S. WHITEING, NATIVE AMERICAN RIGHTS FUND, BOULDER, COLORADO

14 April 1982

The Honorable W. W. Lessley
Chief Water Judge
State of Montana
Law and Justice Center
615 South 16th Street
Bozeman, Montana 59715

RE: In the Matter of the Determination of the Applicability of Section 85-2-217, MCA, to Individual Tribal Members Claiming Reserved Water Rights

Dear Judge Lessley,

This comment is filed on behalf of the Northern Cheyenne Tribe and the Crow Tribe as interested parties in connection with the above matter. The filing of this comment should in no way be taken as submission to the jurisdiction of the Court which the Tribes expressly disclaim. Nor should it be taken as an admission or indication by the Tribes that the Montana water adjudication system has any applicability to the Tribes or their members.

The Northern Cheyenne and Crow Tribes interpret Section 85-2-217, MCA, as applicable to individual tribal members claiming reserved water rights on their reservations. The section specifically applies to reserved Indian water rights of those tribes negotiating with the Reserved Water Rights Compact Commission. Both the Northern Cheyenne and the Crow Tribes are negotiating with the Montana Reserved Water Rights Compact Commission on the basis that *all* reserved water rights within their

respective reservations will be a part of any compact reached. Thus it would be difficult, if not impossible, to negotiate a compact if allottees were required to file water claims independently of the Tribes.

Respectfully submitted

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By /s/ Jeanne S. Whiteing

APPENDIX B

Montana Code Annotated:

3-7-221. ***Appointment of chief water judge—term of office.*** **(1) The chief justice of the Montana supreme court shall appoint a chief water Judge from among the district judges serving or retired as of the time of appointment.**

(2) The term of office of the chief water judge is from the date of initial appointment until June 30, 1985. After June 30, 1985, the term of office is 4 years, subject to continuation of the water divisions by the legislature.

History: En. Sec. 1, Ch. 442, L. 1981.

3-7-222. ***Salary—office space.*** **(1) The chief water judge is entitled to receive the same salary and expense allowance as provided for district judges in 3-5-211.**

(2) The office of the chief water judge shall be at the location that the chief justice of the Montana supreme court shall designate. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge, which money may be appropriated by the legislature from the water rights adjudication account.

History: En. Sec. 2, Ch. 442, L. 1981.

3-7-223. ***Duties of the chief water judge.*** **The chief water judge shall:**

(1) coordinate with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously

and properly compiled and transferred to the water judge in each water division;

(2) assure that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree; and

(3) assure that any contested or conflicting claims are tried and adjudicated as expeditiously as possible.

History: En. Sec. 3, Ch. 442, L. 1981.

3-7-224. *Jurisdiction of chief water judge.* (1) The chief water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge has jurisdiction over all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the determination of existing water rights, the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of an interested party or on his own motion, as may reasonably be required to allow him to fulfill his responsibilities.

History: En. Sec. 4, Ch. 442, L. 1981.